

AMENDED IN ASSEMBLY JULY 9, 2007

**SENATE BILL**

**No. 159**

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**Introduced by Senator Wyland**

January 30, 2007

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An act to amend ~~Section 927.2~~ *Sections 927.6 and 927.7* of the Government Code, relating to the California Prompt Payment Act.

LEGISLATIVE COUNSEL'S DIGEST

SB 159, as amended, Wyland. California Prompt Payment Act: disabled veteran business enterprises.

Existing law, the California Prompt Payment Act, requires a state agency that acquires property or services pursuant to a contract with a business to make payment to the person or business on the date required by the contract and as specified, or be subject to a late payment penalty. These provisions require a state agency to pay specified penalties to a claimant if the agency fails to submit a correct claim schedule to the Controller by the required payment approval date. These provisions also require the Controller to pay a specified penalty to a claimant if the Controller fails to make a payment within 15 calendar days of receipt of the claim schedule from a state agency, as specified. Those penalties accrue at a higher rate if the claimant is a *certified* small business, ~~as defined a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, as specified.~~

Existing law establishes the California Disabled Veteran Business Program. This program requires, among other things, that state agencies, departments, officers, and entities, as specified, have statewide participation goals of not less than 3% for disabled veteran business enterprises for contracts entered into during the year, except as specified.

Existing law defines a disabled veteran business enterprise ~~enterprise~~ *enterprise* for purposes of these provisions.

This bill would ~~revise the definition of a small business under the California Prompt Payment Act to include a disabled veteran business enterprise, as defined under the California Disabled Veteran Business Program, thereby making the~~ *among the entities to whom those higher penalties are payable to a small business under the California Prompt Payment Act, as described above, also payable to a disabled veteran business enterprise.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 927.6 of the Government Code is amended*  
2     *to read:*

3     927.6. (a) State agencies shall pay applicable penalties, without  
4     requiring that the claimant submit an additional invoice for these  
5     amounts, whenever the state agency fails to submit a correct claim  
6     schedule to the Controller by the required payment approval date.  
7     The penalty shall cease to accrue on the date the state agency  
8     submits the claim schedule to the Controller for payment, and shall  
9     be paid for out of the state agency's funds. If the claimant is a  
10    certified small business, a nonprofit organization, a nonprofit public  
11    benefit corporation, ~~or a small business or nonprofit organization~~  
12    that provides services or equipment under the Medi-Cal program,  
13    *or a disabled veteran business enterprise, as defined in*  
14    *subparagraph (A) of paragraph (7) of subdivision (b) of Section*  
15    *999 of the Military and Veterans Code, the state agency shall pay*  
16    to the claimant a penalty of one-quarter of 1 percent of the amount  
17    due, per calendar day, from the required payment date. However,  
18    a nonprofit organization shall only be eligible to receive a penalty  
19    payment if it has been awarded a contract or grant in an amount  
20    less than five hundred thousand dollars (\$500,000).

21    (b) For all other businesses, the state agency shall pay a penalty  
22    at a rate of 1 percent above the rate accrued on June 30 of the prior  
23    year by the Pooled Money Investment Account, not to exceed a  
24    rate of 15 percent, except that, if the amount of the penalty is  
25    seventy-five dollars (\$75) or less, the penalty shall be waived and  
26    not paid by the state agency. On an exception basis, state agencies

may avoid payment of penalties, for failure to submit a correct claim schedule to the Controller by the required payment approval date, by paying the claimant directly, from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

*SEC. 2. Section 927.7 of the Government Code is amended to read:*

927.7. The Controller shall pay claimants within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the claimant without requiring that the claimant submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the claimant is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, ~~or a small business or nonprofit organization~~ that provides services or equipment under the Medi-Cal program, *or a disabled veteran business enterprise, as defined in subparagraph (A) of paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code*, the Controller shall pay to the claimant a penalty of one-quarter of 1 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than five hundred thousand dollars (\$500,000). For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the Controller.

~~SECTION 1. Section 927.2 of the Government Code is amended to read:~~

~~927.2. The following definitions apply to this chapter:~~

~~(a) "Claim schedule" means a schedule of invoices prepared and submitted by a state agency to the Controller for payment to the named claimant.~~

~~(b) "Grant" means a signed final agreement between any state agency and a local government agency or organization authorized~~

1 to accept grant funding for victim services or prevention programs  
2 administered by any state agency. Any such grant is a contract and  
3 subject to this chapter.

4 (e) “Invoice” means a bill or claim that requests payment on a  
5 contract under which a state agency acquires property or services  
6 or pursuant to a signed final grant agreement.

7 (d) “Medi-Cal program” means the program established pursuant  
8 to Chapter 7 (commencing with Section 14000) of Part 3 of  
9 Division 9 of the Welfare and Institutions Code.

10 (e) “Nonprofit public benefit corporation” means a corporation;  
11 as defined by subdivision (b) of Section 5046 of the Corporations  
12 Code, that has registered with the Department of General Services  
13 as a small business.

14 (f) “Nonprofit service organization” means a nonprofit entity  
15 that is organized to provide services to the public.

16 (g) “Reasonable cause” means a determination by a state agency  
17 that any of the following conditions are present:

18 (1) There is a discrepancy between the invoice or claimed  
19 amount and the provisions of the contract or grant.

20 (2) There is a discrepancy between the invoice or claimed  
21 amount and either the claimant’s actual delivery of property or  
22 services to the state or the state’s acceptance of those deliveries.

23 (3) Additional evidence supporting the validity of the invoice  
24 or claimed amount is required to be provided to the state agency  
25 by the claimant.

26 (4) The invoice has been improperly executed or needs to be  
27 corrected by the claimant.

28 (5) The state agency making the determination or the claimant  
29 involved has been subject to a computing or accounting failure  
30 related to the Year 2000 Problem.

31 (h) “Received by a state agency” means the date an invoice is  
32 delivered to the state location or party specified in the contract or  
33 grant or, if a state location or party is not specified in the contract  
34 or grant, wherever otherwise specified by the state agency.

35 (i) “Required payment approval date” means the date on which  
36 payment is due as specified in a contract or grant or, if a specific  
37 date is not established by the contract or grant, 30 calendar days  
38 following the date upon which an undisputed invoice is received  
39 by a state agency.

1     (j) ~~“Revolving fund” means a fund established pursuant to~~  
2 ~~Article 5 (commencing with Section 16400) of Division 4 of Title~~  
3 ~~2.~~

4     (k) ~~“Small business” means a business certified as a “small~~  
5 ~~business” in accordance with subdivision (d) of Section 14837 or~~  
6 ~~a “disabled veteran business enterprise” as defined in Section 999~~  
7 ~~of the Military and Veterans Code.~~

8     (l) ~~“Small business” and “nonprofit organization” mean, in~~  
9 ~~reference to providers under the Medi-Cal program, a business or~~  
10 ~~organization that meets all of the following criteria:~~

11         (1) ~~The principal office is located in California.~~

12         (2) ~~The officers, if any, are domiciled in California.~~

13         (3) ~~If a small business, it is independently owned and operated.~~

14         (4) ~~The business or organization is not dominant in its field of~~  
15 ~~operation.~~

16         (5) ~~Together with any affiliates, the business or organization~~  
17 ~~has gross receipts from business operations that do not exceed~~  
18 ~~three million dollars (\$3,000,000) per year, except that the Director~~  
19 ~~of Health Services may increase this amount if the director deems~~  
20 ~~that this action would be in furtherance of the intent of this chapter.~~

21     (m) ~~“Year 2000 Problem” has the same meaning as that set forth~~  
22 ~~in subdivision (a) of Section 3269 of the Civil Code.~~